IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE.

WRIT PETITION NO. 4852 OF 2004

Anand Ganesh Kale and ors ..... Petitioner.

versus

Bank of Maharashtra and ors ..... Respondents.

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Mr. Praveen K. Hushing for the petitioner.

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CORAM ; V.G.PALSHIKAR &
MRS. RANJANA DESAI, JJ.

DATED; 23rd AUGUST, 2004.

P.C.;

1. By this petition, the petitioner claims a writ of mandamus directing the respondent which is a nationalised bank to give its contribution for the Provident Fund due and payable under the rules of the Bank as also Provident Fund Act.

2. About the dues of the petitioner under relevant law there can be no dispute. Question is how this petition is maintainable for which reliance is placed on a judgment of the Supreme Court in Bank of India and others Vs. C.P.Sawarnakar and others reported in 2003 (2) S.C.C. 721. There can be no dispute regarding proposition laid down by the Supreme Court of India that for the purposes of Article 12 of the Constitution

of India a bank is an instrumentality of the State. Article 12 itself makes it very clear that the State or instrumentality of the State mentioned therein is so defined for the purpose of para 3 of the Constitution. Para 3 deals with fundamental rights and its implementation. The submission then is right to get the Provident Fund contribution. From the statutory rules, the bank which is an instrumentality of the State cannot avoid its payment and avoidance is justiceable directly before this court as fundamental right guaranteed by Articles 14 and 21 of the Constitution is violated. Article 14 speaks of equality before law and equal protection of law. There is nothing in this petition which points out the breach of either of the requirement of Article 14. Reference then is made to article 21 which is right to live and the submission is that this 10% amount payable to the petitioner under relevant rules if not paid will destroy their right to live without other terminal benefit including the contribution of the petitioner is also paid to the petitioner. The life of the petitioner in the manner leading presently by the petitioner, is not endanger in any manner by such non payment. In such circumstances civil suit for recovery of money due is the proper and better remedy. Hence petition is dismissed.

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